>> Insolvency
TRENDS

National Conference of Insurance Guaranty Funds NCIGF℠

A biannual publication providing updates on recent property and casualty insolvencies and public policy developments

2018 SUMMER

GUARANTY FUNDS WORK

in partnership with insurance regulators and to protect policyholders.

A state court finds an insurance company insolvent and orders it liquidated.

Policyholder claim files are transferred to the guaranty funds for servicing.

Covered claims are paid from a pool of money drawn from the three sources made available at the time of insolvency; a) the insolvent insurance company's remaining assets, b) statutory deposits collected in certain states, and c) assessments on insurers licensed to write business in a state.

Payments are made promptly.

HOW THE GUARANTY FUND SYSTEM IS FUNDED

Recoveries

To the extent possible to fulfill guaranty fund statutory duties, monies are obtained from remaining estate assets.

- The insurance company's remaining assets (including reinsurance)
- Statutorily mandated deposits collected in certain states while the company is still writing business

Assessments from Insurers

Charged to insurance companies licensed to write business in a state

- Typical cap is 2% of "net direct written premium"
- Assessment is determined by the amount of money needed by the guaranty fund to supplement the funding pool described above
- Some guaranty funds have separate "assessment accounts" allowing them to segregate assessment billing and payments into various lines of business – a typical structure would be workers' compensation, auto, and all other property & casualty lines covered by the funds

PROPERTY AND CASUALTY GUARANTY FUNDS: CONTINUING TO EVOLVE TO PROTECT POLICYHOLDERS

The guaranty fund system was established in 1969 by the property and casualty insurance industry, insurance regulators, and states to provide a safety net that protects insurance consumers if an insurance company fails. The system is an innovative and common-sense mechanism that draws first on the assets of the failed insurance company and, in turn, assessments of healthy insurers in each state. Since its inception, the system has paid out more than $35 billion to policyholders, beneficiaries, and claimants related to more than 600 insolvencies.

Following a liquidation, the statutorily created guaranty funds seamlessly step into the shoes of a defunct company and pay the covered claims of policyholders and claimants whose claims otherwise would go unpaid by an insolvent insurance company.

Today, the guaranty fund system remains true to its original intent: delivering protection to those least able to weather the impact of insurance company insolvencies.

NCIGF ANTICIPATES INTERNATIONAL FORUM OF INSURANCE GUARANTEE SCHEMES (IFIGS) DEVELOPMENTS

The International Forum of Insurance Guarantee Schemes (IFIGS) facilitates and promotes international cooperation between insurance guaranty schemes (similar to the U.S. guaranty funds) and other stakeholder organizations with an interest in policyholder protection. The IFIGS is made up of 24 full and associate members, 22 of which are Insurance Guarantee Schemes (IGSs) from Africa, Asia, Europe and North America. There are more than 30 IGSs worldwide.

IGSs explore mechanisms for protecting policyholders of insurance companies that fail. Many IGSs provide expertise in stabilization or restructuring resolutions, and all IGSs can provide expertise and some form of insurance protection and/or financial support to assist in the liquidation of an insolvent insurer.

The NCIGF expects IFIGS to be involved in several international policyholder protection matters in the upcoming months:

- The next iteration of Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) will be released for public consultation in August and is expected to include resolution-related elements.
- The International Association of Insurance Supervisors (IAIS) Resolution Working Group will hold a stakeholder session on resolution matters this September in Basel, Switzerland.
- Additionally, the European Union intends to develop minimum standards for insurance guaranty schemes that would be applicable to their member countries and it is conceivable that the IAIS will use the EU standards as an international standard in the future.

NATIONAL AND INTERNATIONAL DEVELOPMENTS: DREYER TAKES OVER AT FEDERAL INSURANCE OFFICE

Nearly 18 months after the departure of former Director Mike McRaith, the Federal Insurance Office (FIO) appointed Steve Dreyer FIO Director in June. The move ends months of speculation regarding who would take over FIO leadership in the Trump Administration. Dreyer is a former S&P analyst.

The move comes as FIO remains the focus on Capitol Hill, with a bipartisan group of lawmakers recently advancing legislation that would reduce FIO's responsibility and authority. A pending bill, HR 3861, would eliminate FIO's authority to issue subpoenas, collect information directly from insurers, and study and issue reports, as well as remove the Treasury's authority to assign new duties or authorities to FIO.

COVERED AGREEMENT IMPLEMENTATION MOVES FORWARD

In late March, European Union governments officially signed off on the U.S. and EU covered agreement, the final approval step on the European side of the covered agreement process. The agreement, which was negotiated and agreed to in the final days of the Obama Administration, was approved without debate at a meeting of the General Affairs Council.

States must implement the reinsurance collateral reduction elements of the Covered Agreement within five years or face preemption. To accomplish this, the Reinsurance Task Force of the National Association of Insurance Commissioners (NAIC) has been working to develop appropriate amendments to the Credit for Reinsurance Model Act and Regulation that would implement the provisions of the Covered Agreement. The task force has exposed proposed revisions to the Credit for Reinsurance Model Act and Model Regulation through July 23 and hopes to move the revised Model Act and Regulation through the NAIC by the end of the year. The proposed changes seek to hard-code the key provisions of the Covered Agreement into state statutes and regulations – effectively extending the provisions of the Covered Agreement to other qualified jurisdictions, provided those jurisdictions meet certain standards (the same standards the EU agreed to in the Covered Agreement).

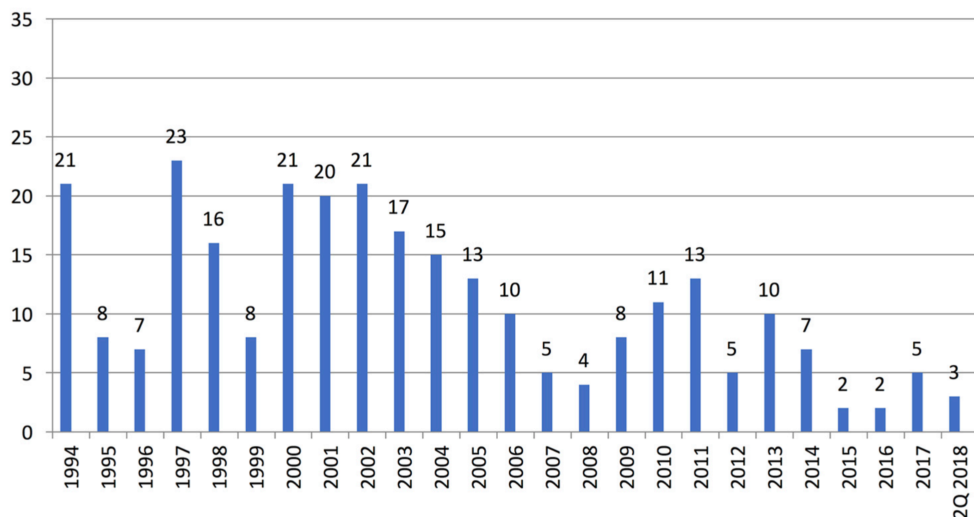
PRESIDENT TRUMP SIGNS REGULATORY RELIEF LEGISLATION

On May 24, President Donald Trump signed S.2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act. The legislation, authored by Senate Banking Chairman Mike Crapo (R-ID) and Senator Jon Tester (D-MT), passed the Senate in March and the House in May, and it represents the first major legislative reforms to the Dodd–Frank Wall Street Reform and Consumer Protection Act. Most of the package focuses on community and regional banks and credit unions, although the legislation does include language from Senators Tester and Dean Heller (R-NV) on accountability and reporting requirements for the Federal Reserve and Treasury regarding their negotiations of international insurance standards. The provision also requires “Team USA” to reach a consensus with the NAIC when participating in those negotiations, and establishes a 21-member Insurance Policy Advisory Committee on International Capital Standards at the Federal Reserve.

NEW INSOLVENCIES IN 2018

Access Insurance Company, a Texas domicile, was liquidated on March 13, 2018. The company had a book of substandard auto policies. Insurance Company of the Americas, a Florida domicile, was liquidated on January 24, 2018. It had only a small number of claims (nine in Florida and one in Texas). ReliaMax Surety Company, a South Dakota domicile, was liquidated on June 27, 2018. This company wrote surety policies and is licensed in six states. Guaranty fund exposure is expected to be low because most states do not cover surety policies.

The following chart shows the number of insolvencies from 1994 through Q2 2018:



STATE DEVELOPMENTS

Alabama Senate Bill No. 283. This bill conforms certain provisions of the guaranty association act to the most recent model act and would define additional terms. This bill would also raise the cap for statutory benefits available for a covered claim from $150,000 to $300,000, and would provide for an aggregate cap. The proposal has been enacted.

Delaware House Bill No. 318. This bill would update the Delaware guaranty fund act to more closely conform to provisions of the National Conference of Insurance Guaranty Funds (NCIGF) and NAIC models. It increases the covered claim cap from $300,000 to $500,000. The measure is progressing and has passed both houses of the legislature.

Louisiana House Bill No. 756. This bill strikes the exemption of uninsured motorist coverage from the exhaustion of other coverage provision in the Louisiana guaranty fund act. It was recently enacted.

Missouri House Bill No. 1690. This bill modifies insurance liquidation priority distribution to provide for payment and Class 2 priority of unallocated loss adjustment expenses of guaranty associations. The proposal has been enacted.

Division Statutes. This year, in several states, "division" or run-off proposals have been floated. While these bills vary somewhat in details, their goal is to allow an insurance company to move a block of business to a different entity with a pre-determined amount of assets or reinsurance. Divisions under these statutes would be conducted pursuant to a plan approved by the domiciliary state insurance commissioner and in some cases the local court.

Division statutes are in place in Connecticut, Rhode Island, and, most recently, in Oklahoma.

Other states floating bills this year include: **Georgia (HB 754), Illinois (HB 5160), Iowa (HSB 600).** The Illinois proposal has passed the legislature in the form of **IL SB 1737.** In Georgia the bill passed the legislature but was vetoed. The Iowa bill is a study bill.

Interest in this concept is expected to continue.

LARGE DEDUCTIBLE LEGISLATION

Many recent insolvencies have involved a large portfolio of Workers' Compensation large deductible business. In these complex programs, the insured is called upon to pay in the first instance and obtain reimbursement from the insured involved in a high deductible program. By entering into a large deductible arrangement, the insured realizes significant premium savings. If the insurance company becomes insolvent, there can be much confusion about who should make the deductible collections, who should benefit from any collateral securing these obligations, and who should handle claims that may have previously been handled by a third-party administrator (TPA) selected by the insured. Eleven states currently have large deductible liquidation act provisions in place[1]. A bill was passed in Louisiana this year but unfortunately was vetoed by the governor. States will likely continue to float large deductible bills in future legislative sessions.

AT THE NAIC:

RECEIVERSHIP AND INSOLVENCY TASK FORCE

Pursuant to a referral from the NAIC Financial Stability Task Force, the Receivership and Insolvency Task Force (RITF) is considering whether any enhancements to the insolvency system are appropriate to address recovery and resolution issues due to the evolution of supervisory standards, best practices and laws relating to financial stability concerns[2]. The work plan contemplates the RITF will have the following three mandates and has established the drafting groups to tackle each of these mandates:

1) Evaluate whether current recovery and resolution laws, guidance, tools, etc. incorporate best practices regarding areas identified as important to financial stability

2) Review what information from recovery/resolution planning may be valuable in prospective planning for large cross-border (state borders included) U.S. insurance groups

3) Identify misalignments, if any, between state and federal laws that could be an obstacle to achieving effective and orderly recovery and resolutions for U.S. insurance groups

Guaranty fund representatives expect to be involved in this effort.

RECEIVERSHIP MODEL LAW WORKING GROUP

The NAIC Receivership Model Law Working Group (RMLWG) spearheads development of NAIC model law on insurance insolvency matters. The group has been discussing coverage and assessment issues relating to long-term care policies on which the Life and Health guaranty funds are triggered. The RITF recently adopted amendments recommended by this group that would add HMO companies to both the coverage and assessment base of the Life and Health guaranty funds. Variations on this new model are already being floated in the legislatures in many states. Recommendations to modify related NAIC model laws to be consistent with the new Life and Health provisions are being considered by the RITF for referral to related NAIC Committees.

Footnote:
[1] For a complete list of states with large deductible statutes in place along with information about NCIGF model laws and other public policy information, **click here.**
[2] See the NAIC's State Ahead Strategic Plan at **here** for more background on this endeavor.

LARGE DEDUCTIBLE WORKING GROUP

This group reports to the RITF. Its charge is to:

> Study states' receivership laws and practices regarding receivership of insurers with significant books of large deductible Workers' Compensation business, and evaluate the need for a model act/rule, or amendments to existing models, that govern the rights and duties of the various parties regarding large deductible business in insolvencies, including, but not limited to, consideration of a provision that expressly permits the collection of large deductibles from insureds during an insolvency proceeding. Provide any other recommendations for possible enhancements to the U.S. receivership regime based on this study. Complete by the 2018 Fall National Meeting.

The Working Group is chaired by James Mills (Oklahoma regulator). Most recently, the Working Group sent out a comprehensive survey to all state regulators asking about their current laws and practices relating to large deductible products in liquidating insurance companies.

CYBERSECURITY (EX) WORKING GROUP

The NAIC's Insurance Data Security Model Law, which was adopted in October of 2017, seeks to impose new cybersecurity standards on insurance companies and their business associates to improve the protection of sensitive policyholder and claimant information. Under the Model Law, governed entities must create an Information Security Program to assess and manage the cybersecurity risks to the organization and its service providers.

Since its adoption by the NAIC, both South Carolina and Rhode Island have introduced bills in their state legislatures seeking adoption of the Model Law. South Carolina introduced a bill almost immediately after adoption by the NAIC. The South Carolina bill moved rather quickly through the legislature and was approved on May 3, 2018. The law mostly tracks the Model Law, although it does not require licensees to notify the commissioner within 72 hours of a breach. The law takes effect on January 1, 2019. In Rhode Island both the House and the Senate have introduced bills seeking adoption of the Model Law, although progress has stalled as the 72-hour breach notification to the Commissioner is debated.

National Conference of Insurance Guaranty Funds NCIGF[SM]

LEARN MORE

More information about the property and casualty guaranty fund system is available on our Website at www.ncigf.org.

Look for a new issue of NCIGF's Insolvency Trends in January 2019.

The NCIGF is a nonprofit association incorporated in December 1989 and designed to provide national assistance and support to the property and casualty guaranty funds located in each of the fifty states and the District of Columbia.

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